

Request for Council Agenda Item**E-6**Department: LegalPerson presenting to Council: Thomas GwosdzReport: _____ Resolution: X Ordinance: _____ Public Hearing: _____

Topic of Council Item	
A resolution authorizing the City Manager to execute a settlement agreement with the Guadalupe-Blanco River Authority resolving the contested case hearing regarding an application by GBRA for an amendment to certificate of adjudication No. 18-3863, and declaring an effective date.	
Background information	
<p>GBRA filed an application to amend Certificate of Adjudication No. 18-3863 with the Texas Commission on Environmental Quality (TCEQ). Subsequent to the initial filing, GBRA amended its application to include domestic uses and added a diversion segment on the Guadalupe River from GBRA's Saltwater Barrier and Diversion Dam upstream to a point in Comal County, Texas. The City of Victoria protested the 18-3863C Application, alleging that the Victoria's surface water rights would be negatively impacted by the 18-3863C Application.</p> <p>Prior to the contested case hearing, City staff negotiated a settlement agreement to resolve the dispute. Under the terms of the settlement agreement, GBRA and the City agree that GBRA shall reserve 241 acre-feet of water from the total it is allowed to divert under the certificate, and that the City may divert up to a total of 241 acre-feet of water during each 10-year period, at a rate not to exceed 18 cubic feet per second.</p> <p>In accordance with Article III, Section 8 of the Home Rule Charter of the City of Victoria, the City Attorney hereby files this written statement with the City Secretary that this compromise adequately compensates the City for anticipated – yet undefined – damages that would likely have occurred as a result of the amendment, and that this compromise avoids the cost and uncertainty of continued litigation.</p> <p>Staff recommends approval of the settlement agreement.</p>	
Cost	
Amount of Expenditure: _____	
Fund #:	Cost Center #:
Account #:	Finance Approval:
Documents approved by Legal?	
	Legal Approval:
Important Dates for Tickler file:	
Contract Expiration Date: _____	Termination Deadline: _____
Contract Renewal Date: _____	Performance Deadlines: _____
Other (_____): _____	Other (_____): _____

Resolution No. 2018-____R

A resolution authorizing the City Manager to execute a settlement agreement with the Guadalupe-Blanco River Authority resolving the contested case hearing regarding an application by GBRA for an amendment to certificate of adjudication No. 18-3863, and declaring an effective date.

Whereas the Guadalupe-Blanco River Authority (GBRA) filed an application to amend Certificate of Adjudication No. 18-3863 with the Texas Commission on Environmental Quality (TCEQ), and then subsequently amended that application to include domestic uses, along with adding a diversion segment on the Guadalupe River from GBRA's Saltwater Barrier and Diversion Dam upstream to a point in Comal County, Texas;

Whereas the City of Victoria protested the 18-3863C Application, alleging that the Victoria's surface water rights would be negatively impacted by the 18-3863C Application;

Whereas the City has since negotiated a settlement agreement to resolve the dispute whereby GBRA and the City agree that GBRA shall reserve 241 acre-feet of water from the total it is allowed to divert under the certificate, and that the City may divert up to a total of 241 acre-feet of water during each 10-year period, at a rate not to exceed 18 cubic feet per second;

Whereas in accordance with Article III, Section 8 of the Home Rule Charter of the City of Victoria, the City Attorney hereby files this written statement with the City Secretary that this compromise adequately compensates the City for anticipated – yet undefined – damages that would likely have occurred as a result of the amendment, and that this compromise avoids the cost and uncertainty of continued litigation;

Now therefore, be it resolved by the City Council of the City of Victoria, Texas:

1. The foregoing recitals are found to be true and correct and are incorporated herein for all purposes.
2. The City Manager is authorized to execute a settlement agreement with the Guadalupe-Blanco River Authority to resolve the City's protest against GBRA's 18-3863C Application, attached hereto as Exhibit "A" and incorporated herein, with changes in form as approved by the City Attorney.
3. This resolution shall become effective immediately upon adoption.

Passed, this the 4th day of December, 2018

Ayes:

Nays:

Abstentions:

Approved and adopted, this the 4th day of December, 2018

Paul Polasek, Mayor of the
City of Victoria, Texas

Attest:

Approved as to Legal Form:

April Hilbrich, City Secretary

Thomas A. Gwosdz, City Attorney

Distribution: Legal Department
 Public Works
 Finance Department

Copies sent: _____

Exhibit “A”

SOAH DOCKET NO. 582-18-4649
TCEQ DOCKET NO. 2016-0530-WR

APPLICATION BY THE
GUADALUPE-BLANCO RIVER
AUTHORITY FOR AN
AMENDMENT TO CERTIFICATE
OF ADJUDICATION NO. 18-3863.

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

SETTLEMENT AGREEMENT BETWEEN
THE GUADALUPE-BLANCO RIVER AUTHORITY
AND THE CITY OF VICTORIA

THIS AGREEMENT is entered into by and between the Guadalupe-Blanco River Authority (GBRA) a conservation and reclamation district created under Article VXI, Section 59 of the Texas Constitution with offices at 933 East Court Street, Seguin, Texas 78155, and the City of Victoria (“Victoria”), a home-rule municipality located in Victoria County, Texas.

Recitals

A. GBRA filed an application to amend Certificate of Adjudication No. 18-3863 with the Texas Commission on Environmental Quality (TCEQ) that is currently pending before TCEQ (the “18-3863C Application”).

B. Subsequent to the initial filing, GBRA amended its application to include domestic uses and added a diversion segment on the Guadalupe River from GBRA’s Saltwater Barrier and Diversion Dam upstream to a point in Comal County, Texas.

C. The TCEQ staff proposed a draft amendment to Certificate of Adjudication No. 18-3863 that incorporated GBRA’s amendments to the 18-3863C Application and imposed certain special conditions (the “Draft Amendment”). The said Draft Amendment is attached hereto and fully incorporated herein by reference as **Exhibit A**.

D. Victoria protested the 18-3863C Application, alleging that the Victoria’s surface water rights would be negatively impacted by the 18-3863C Application.

E. Victoria and GBRA wish to resolve their differences over the 18-3863C Application.

In consideration of their mutual desire to resolve their differences, Victoria and GBRA agree as follows:

Terms

1. Each calendar year, GBRA agrees to reserve a quantity of water from the total amount GBRA is authorized to divert that year under Certificate of Adjudication No. 18-3863, as amended, for use by Victoria ("Womack Water"). The quantity to be reserved by GBRA shall be 241 acre-feet, less the amount that Victoria has already called for within any 10 year period, as described in Paragraphs 2 and 7.

2. Victoria may divert up to a total of 241 acre-feet of Womack Water within each 10-year period, with the first period starting on January 1, 2019 and ending on December 31, 2028.

3. Victoria's maximum rate of diversion for the Womack Water at any time under this Agreement shall not exceed 18 cubic feet per second.

4. Any Womack Water diverted under this Agreement shall be diverted at diversion points authorized for Victoria under Victoria's TCEQ water use Permit No. 5466.

5. Victoria shall notify GBRA in writing at least seven (7) calendar days prior to diversion of any Womack Water of the estimated amount to be diverted, the place of diversion, and the expected dates of diversion so that GBRA is able to file any required Notices of Intent to Divert with the TCEQ's Watermaster. For the purpose of this agreement, an email serves as a written form of communication. Notice to GBRA shall be sent to GBRA by sending it to the person named below at the mailing address or email address listed below:

Guadalupe-Blanco River Authority
933 East Court Street
Seguin, Texas 78155
ATTN: Chief Engineer

Email to: thill@gbra.org

GBRA may designate another person and/or other addresses by notifying Victoria in writing as follows:

City of Victoria
Department of Public Works
P.O. Box 1758
Victoria, Texas
ATTN: Director of Public Works

Email to: dreese@victoriatx.org

Victoria may designate another person and/or other addresses by notifying GBRA as indicated above.

6. Within three (3) calendar days after the last day of each month in which Victoria makes a diversion, Victoria shall confirm the amount, place, and date(s) of diversion in writing to GBRA so that GBRA is able to make required filings with the TCEQ Watermaster.

7. City agrees to notify GBRA no later than August 10 of each year regarding its intent to use or not use a quantity of Womack Water during that year. Victoria agrees to specify the amount it intends to use. The balance of Womack Water remaining during the then-current 10-year period will be reduced by the amount Victoria has indicated it will use in each notification during that period, whether actually diverted or not. Upon notification from the City that it will not be using the water, GBRA is free to use the water as it deems necessary.

8. Within ten (10) business days of the Effective Date hereof, the City agrees to withdraw its request for contested case hearing and to notify the TCEQ that it supports the approval of the Draft Amendment.

9. GBRA's obligations under this Settlement Agreement are expressly contingent on the TCEQ's granting the 18-3863C Application in substantially the same form as **Exhibit A** hereto. GBRA's obligations hereunder are also expressly subject to the

terms and conditions of Certificate of Adjudication 18-3863 as amended and to senior and superior water rights.

10. This Agreement shall be effective on the date it is signed by the last Party representative to sign below.

The City of Victoria, Texas

Guadalupe-Blanco River Authority

Printed Name: _____




Kevin Patteson
General Manager/CEO

Title: _____
Date Signed: _____

Date Signed: 11/27/18

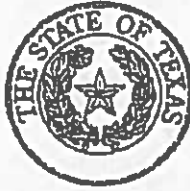
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General Counsel

EXHIBIT A
18-3863C Application
Draft Amendment

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 18-3863C

TYPE §§11.122, 11.085

Permittee: Guadalupe-Blanco
River Authority

Address: 901 East Court Street
Sequin, Texas 78155

Filed: July 5, 2012

Granted:

Purpose: Agricultural, Municipal,
Industrial, Mining,
and Domestic

Counties: Victoria, Calhoun, Refugio,
DeWitt, Gonzales,
Guadalupe and Comal

Watercourse: Guadalupe River

Watershed: Guadalupe, San Antonio,
and Lavaca River Basins &
San Antonio-Nueces and
Lavaca-Guadalupe Coastal
Basins

WHEREAS, Guadalupe-Blanco River Authority (GBRA or Applicant) owns a portion of Certificate of Adjudication No. 18-3863 which authorizes the diversion and use of not to exceed 3,000 acre-feet of water per year from the perimeter of a reservoir, created by the Salt Water Barrier and Diversion Dam owned by GBRA and authorized by Certificate of Adjudication No. 18-5484, on the Guadalupe River, Guadalupe River Basin, at a maximum combined diversion rate of 18.05 cfs (8,100 gpm) for municipal, industrial, and agricultural purposes in Victoria, Calhoun, and Refugio counties within the Guadalupe, San Antonio and Lavaca River Basins and the San Antonio-Nueces and Lavaca-Guadalupe Coastal Basins; and

WHEREAS, Applicant seeks to amend its portion of Certificate of Adjudication No. 18-3863 to add mining and domestic use to its authorized water; to add an additional place of use for the authorized water in DeWitt, Gonzales, Guadalupe and Comal counties; and

WHEREAS, Applicant also seeks to authorize an exempt interbasin transfer to those portions of Gonzales, DeWitt, Guadalupe and Comal counties in the San Antonio and Lavaca River Basins and the Lavaca-Guadalupe Coastal Basin, and

WHEREAS, Applicant further seeks to add a 247-mile diversion segment beginning at the intersection of the Guadalupe River and Interstate Highway (IH) 35 in Comal County and extending downstream to the GBRA's Saltwater Barrier and Diversion Dam located in Calhoun and Refugio counties; and

WHEREAS, the proposed upper limit of the diversion segment is located at a point on the Guadalupe River approximately 1.35 miles southeast of New Braunfels, Texas, bearing S 3° W, 1,943.77 feet from the north corner of the J. Thompson Survey, Abstract No. 608, also being Latitude 29.692717° N, Longitude 98.167794° W, in Comal County; and

WHEREAS, the proposed lower limit of the diversion segment is located at a point on the Guadalupe River at GBRA's Saltwater Barrier and Diversion Dam approximately 3.5 miles north of Tivoli, Texas, bearing S 78° E, 930 feet from the northwest corner of the Silas Hulse Survey, Abstract No. 367, also being Latitude 28.505828° N and Longitude 96.884162° W in Calhoun and Refugio counties; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, this amendment, if granted, is subject to requirements and orders of the South Texas Watermaster; and

WHEREAS, the Executive Director recommends Special Conditions be included; and

WHEREAS, no requests for a contested case hearing were received for this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 18-3863 designated Certificate of Adjudication No. 18-3863C, is issued to Guadalupe-Blanco River Authority, subject to the following conditions:

1. USE

In addition to the previous authorizations, Owner is authorized to divert and use the authorized 3,000 acre-feet of water per year for mining, municipal, industrial, agricultural, and domestic purposes for use in Victoria, Calhoun, Refugio, DeWitt, Gonzales, Guadalupe and Comal counties. Owner is further

authorized an exempt interbasin transfer to those portions of DeWitt, Gonzales, Guadalupe, and Comal counties in the San Antonio and Lavaca River Basins, and the Lavaca-Guadalupe Coastal Basin.

2. **DIVERSION**

In addition to the previous authorization, Owner is authorized to divert the authorized water from a diversion segment on the Guadalupe River, Guadalupe River Basin. The diversion segment is defined as follows:

- A. Upper limit of the diversion segment is located on the Guadalupe River approximately 1.35 miles southeast of New Braunfels, Texas, bearing S 3° W, 1,943.77 feet from the north corner of the J. Thompson Survey, Abstract No. 608, also being Latitude 29.692717° N, Longitude 98.107794° W, in Comal County.
- B. Lower limit of the diversion segment is located on the Guadalupe River at GBRA's Saltwater Barrier and Diversion Dam, approximately 3.5 miles north of Tivoli, Texas, bearing S 78° E, 930 feet from the northwest corner of the Silas Hulse Survey, Abstract No. 167, also being Latitude 28.505828° N and Longitude 96.884162° W in Calhoun and Refugio counties.

3. **PRIORITY DATE**

The time priority of this right is March 1, 1951.

4. **CONSERVATION**

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

5. **SPECIAL CONDITIONS**

- A. Diversion of water under this amendment shall be authorized subject to the following:

1. Diversions from the segment of the Guadalupe River downstream of IH 35 in Comal County to USGS Gage No. 08173900 shall be authorized when streamflows exceed the following values at USGS Gage No. 08173900 subject to the requirements of Special Conditions B-D below:

USGS Gage No. 08173900 (Guadalupe River at Gonzales, Texas)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Season	Winter			Spring			Summer			Fall		
Subsistence Flow (cfs)	210	210	210	210	210	210	210	210	210	180	180	180
Base Flow (cfs)	796	796	796	791	791	791	727	727	727	746	746	746

2. Diversions from the segment of the Guadalupe River downstream of USGS Gage No. 08173900 to USGS Gage No. 08175800 shall be authorized when streamflows exceed the following values at USGS Gage No. 08175800 subject to the requirements of Special Conditions B-D below:

USGS Gage No. 08175800 (Guadalupe River at Cuero, Texas)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Subsistence Flow (cfs)	130	130	130	120	120	120	130	130	130	86	86	86
Base Flow (cfs)	980	980	980	940	940	940	800	800	800	870	870	870

3. Diversions from the segment of the Guadalupe River downstream of USGS Gage No. 08175800 shall be authorized when streamflows exceed the following values at USGS Gage No. 08176500 subject to the requirements of Special Conditions B-D below:

USGS Gage No. 08176500 (Guadalupe River at Victoria, Texas)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Subsistence Flow (cfs)	160	160	160	130	130	130	150	150	150	110	110	110
Base Flow (cfs)	975	975	975	945	945	945	795	795	795	865	865	865

4. No stream flow restrictions are imposed on diversions from the previously authorized points of diversion.

B. Owner shall not divert water under this amendment if streamflow at the measurement points described in Special Condition A.(1) - A.(3) is equal to or less than the applicable subsistence flow for the respective segment of the Guadalupe River.

- C. If streamflow at the measurement points described in Special Condition A.(1) - A.(3) is greater than the applicable subsistence flow but less than the applicable base flow, Owner shall not divert water under this amendment unless the measured flow at the gage exceeds the applicable subsistence flow, plus 50% of the difference between measured streamflow and the applicable subsistence flow.
- D. If streamflow at the measurement points described in Special Condition A.(1) - A.(3) is greater than the applicable base flow, Owner may divert water authorized under this amendment unless streamflows fall below the applicable base flow standards, in which case Special Conditions B and C apply to the diversions.
- E. Owner shall allow representatives of the TCEQ reasonable access to the property to inspect the measuring device and records.
- F. Owner shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point(s) authorized above in Paragraph 2 and maintain measurement records.
- G. Owner shall contact the South Texas Watermaster prior to diversion of water authorized by this amendment.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 18-3863, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Guadalupe River Basin.

Owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

Date issued: